

FILED - 2
STATE OF ILLINOIS
IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT-CHANCERY DIVISION

COROTHY BROWN CLERK

THE PEOPLE OF THE STATE OF ILLINOIS,

Plaintiff,

-VS-

HOME FORECLOSURE SOLUTIONS LLC,
Defendant.

08CH43259
NO.

COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

NOW COMES Plaintiff, THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, bringing this action complaining of Defendant, HOME FORECLOSURE SOLUTIONS LLC, and states as follows:

JURISDICTION AND VENUE

1. This action is brought for and on behalf of THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, pursuant to the provisions of the Mortgage Rescue Fraud Act, 765 ILCS 940/1 *et seq.*, the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.* ("Consumer Fraud Act"), and her common law authority as Attorney General to represent the People of the State of Illinois.
2. Venue for this action properly lies in Cook County, Illinois, pursuant to Sections 2-101 and 2-102(a) of the Illinois Code of Civil Procedure, 735 ILCS 5/2-101, 735 ILCS 5/2-102(a), in that Defendant is doing business in Cook County, Illinois.

PARTIES

3. Plaintiff, THE PEOPLE OF THE STATE OF ILLINOIS, by LISA MADIGAN, Attorney General of the State of Illinois, is charged, *inter alia*, with the enforcement of the Mortgage Rescue Fraud Act, 765 ILCS 940/1 *et seq.*, and the Consumer Fraud Act, 815 ILCS 505/1 *et seq.*

4. Defendant HOME FORECLOSURE SOLUTIONS, is a limited liability company with its principal place of business at 17550 South Williamsburg Drive, Plainfield, Will County, Illinois. HOME FORECLOSURE SOLUTIONS offers homeownership consultation and mortgage foreclosure rescue services to consumers in the State of Illinois and is therefore engaged in the business of distressed property consulting, as that term is defined in Section 5 of the Mortgage Rescue Fraud Act, 765 ILCS 940/5.

5. For purposes of this Complaint for Injunctive and Other Relief, any references to the acts and practices of Defendant shall mean that such acts and practices are by and through the acts of said HOME FORECLOSURE SOLUTIONS' officers, members, owners, directors, employees, or other agents.

COMMERCE

6. Section 1(f) of the Consumer Fraud Act, 815 ILCS 505/1(f), defines "trade" and "commerce" as follows:

The terms 'trade' and 'commerce' mean the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated, and shall include any trade or commerce directly or indirectly affecting the people of this State.

7. Defendant HOME FORECLOSURE SOLUTIONS was at all times relevant hereto engaged in trade and commerce in the State of Illinois by advertising, soliciting, and offering for sale and selling distressed property consulting services, which consist of homeownership counseling and mortgage foreclosure rescue services, to the general public of the State of Illinois.

DEFENDANT'S COURSE OF CONDUCT

8. Since at least February 1, 2006 and continuing to date, Defendant has been engaged in, and is presently engaged in advertising, offering for sale, and selling consulting services to homeowners whose mortgage payments are outstanding and are facing financial hardship.

9. Since at least February 1, 2006 and continuing to date, Defendant promotes these services to consumers throughout the United States, including to Illinois consumers, through its website, <http://homeforeclosuresolutionsllc.com>.

10. Defendant promises to help consumers with foreclosure prevention. For example, Defendant's website states "[w]ithout a plan you are unlikely to avoid this financially devastating event. All the information you have been provided may be a bit overwhelming. Home Foreclosure Solutions LLC has representatives that can provide you with a Free No Obligation consultation and walk you through you options and help you create a plan of action."

11. Defendant warns consumers that, "[n]ow Is The Time To Take Action...Tilt The Scales Of Justice To Your Favor," and also cautions, "[d]on't forget...time is ticking away and your home will be sold at Public Auction. That's the law. But it doesn't have to be that way."

12. Defendant also promotes its services as educational, stating, "[y]our Foreclosure Education Starts Here...This may well be the most valuable consumer awareness website you'll

ever visit...Home Foreclosure Solutions LLC ensures consumer education with the financial ramifications of foreclosure and ensures the highest possible level of 'Ethical' information with the highest of 'Professional' standards."

13. Defendant's website directs consumers to schedule a free, no obligation consultation.

14. Once a consumer clicks on the link, the consumer is requested to provide information, including the consumer's name, property information, monthly mortgage payments, amount of arrearage, name of lender, any liens or outstanding taxes, and whether bankruptcy was filed.

15. The website list various ways Defendant can help homeowners, including:

- a. reinstating the loan;
- b. refinancing the home;
- c. referral to a bankruptcy attorney;
- d. selling the home to an investor;
- e. listing the home with a realtor; or
- f. short sale of the home.

16. Defendant's website purports to contain information related to state-specific foreclosure laws. The website has information regarding Illinois foreclosure laws, but entirely fails to mention the Illinois' Mortgage Rescue Fraud Act, 765 ILCS 940/1 *et seq.* The Mortgage Rescue Fraud Act strictly regulates conduct of distressed property consultants, such as Defendant.

17. Once a consumer completes an Online Foreclosure Consultation Request and Data Form, Defendant contacts the consumer via telephone. Defendant then asks the consumer a series of questions related to the consumer's mortgage.

18. During the call, the consumer is told that there will be an up-front cost to initiate services. Demanding an up-front cost prior to completing services violates Section 50 of the Mortgage Rescue Fraud Act, 765 ILCS 940/50. Consumers are required to enter into a Mitigation Reinstatement Service contract and pay a deposit on the account for the total service fee. The remainder is due upon acceptance by the mortgage company of the negotiated agreement. See Mitigation Reinstatement Service Contract (Ex. 1).

19. Consumers are also required to enter into an Agreement of Agency contract that states the consumer must pay a nonrefundable \$100 minimum fee. See Agreement of Agency (Ex. 2).

20. Consumers are required to enter into an Owner Obligation contract in which the consumers agree: (1) to save as much money as possible and to put in reserve every month an amount equal to their mortgage payment, (2) to keep open lines of communication with Defendant, and (3) to avoid contact with their mortgage lender and their attorneys, and if they do, to contact Defendant to inform them of the conversation. Any failure on the consumers' part to abide by the Owner Obligation would result on the consumers' forfeiting any remaining unearned fees on deposit. Such a statement is contrary to the provisions of Section 15 of the Mortgage Rescue Fraud Act, 765 ILCS 940/15, which provides consumers a right to cancel the transaction at any time until after the distressed property consultant has performed all services contracted for in the consultant contract. See Owner Obligation Contract (Ex. 3).

21. None of the contracts used by Defendant, contain the "Notice Required by Illinois Law" or "Notice of Cancellation," as set forth in Section 10 of the Mortgage Rescue Fraud Act, 765 ILCS 940/10. (Exs. 1-3).

22. In many instances, Defendant fails to negotiate an appropriate plan with consumer's lender, yet they fail to refund the consumer's money.

23. When consumers indicate that they are in distress and cannot afford to pay a lump sum of the contract service payment, Defendant indicates that it will provide a payment plan for the consumers.

24. Defendant fails to provide consumers with an education regarding the foreclosure process.

25. The only information that Defendant provides to a consumer pursuant to the service contract consists of public documents that are readily obtainable. Defendant merely copies the public documents onto its letterhead.

26. More specifically, but not by way of limitation, the following allegations in paragraph 27 through 43 are pled as illustrations of Defendant's unlawful business practices and are not meant to be exhaustive. Plaintiff reserves the right to prove that other consumers have been injured as a result of Defendant's unlawful practices.

Ken M. Bolek

27. On or about August 16, 1996, consumer Ken M. Bolek obtained a loan in the amount of \$121,000 to refinance a single family home in Justice, Cook County, Illinois.

28. In or about June 2007, Mr. Bolek fell more than 90 days behind in making his monthly mortgage payments of \$1,271.

29. In or about June 26, 2007, Mr. Bolek called HOME FORECLOSURE SOLUTIONS and was told that they could help in these ways:

- a. reinstating the loan;
- b. refinancing the home;
- c. referral to a bankruptcy attorney;
- d. selling the home to an investor;
- e. listing the home with a realtor; or
- f. short sale of the home.

30. On or about July 3, 2007, a representative from HOME FORECLOSURE SOLUTIONS, Bob McAvoy, went to Mr. Bolek's home to provide information about his company's services. He requested that Mr. Bolek provide him with mortgage documents, enter into a Mitigation Reinstatement Service Agreement, Owner Obligation contract, and Agency Agreement contract, and pay an upfront total service fee of \$1,200.

31. Because Mr. Bolek could not afford the entire payment upfront, Bob McAvoy agreed that Mr. Bolek could pay a \$500 deposit and pay the remainder in installments.

32. On or about August 4, 2007, Mr. Bolek entered into the Mitigation Reinstatement Service Agreement, Owner Obligation contract, and Agency Agreement contract, and dropped off his mortgage documents and deposit at Bob McAvoy's house.

33. Contrary to the provisions of Section 50 of the Mortgage Rescue Fraud Act, 765 ILCS 940/50, on August 4, 2007, Defendant requested and collected from Mr. Bolek a \$500 administration fee, prior to completing any services.

34. None of the contracts that Mr. Bolek received contained the "Notice Required by Illinois Law" or "Notice of Cancellation," as set forth in Section 10 of the Mortgage Rescue Fraud Act, 765 ILCS 940/10.

35. The Owner Obligation contract that Mr. Bolek entered into required that he agree: (1) to save as much money as possible and to put in reserve every month an amount equal to Mr. Bolek's mortgage payment, (2) to keep open lines of communication with Defendant, and (3) to avoid contact with his mortgage lender and their attorneys, and if he does, to contact Defendant to inform them of the conversation. Any failure of Mr. Bolek to abide by the Owner Obligation would result on his forfeiting any remaining unearned fees on deposit. Such a statement is contrary to the provisions of Section 15 of the Mortgage Rescue Fraud Act, 765 ILCS 940/15, which provides consumers a right to cancel the transaction at any time until after the distressed property consultant has performed all services contracted for in the consultant contract.

36. The only information Bob McAvoy presented to Mr. Bolek pursuant to the service contract were documents that are readily available to the public, copied onto Defendant's letterhead.

37. After Mr. Bolek entered into the service contracts with Defendant, he received notice that his mortgage payments, from that point forward, should be paid to National City Bank. National City Bank was merging with his original mortgage bank.

38. Mr. Bolek called Bob McAvoy to inform him of the notice to forward his mortgage payments to National City Bank and to ask whether he should do so.

39. On or about December 2007, Bob McAvoy informed him not to make any payments to National City Bank.

40. In or about December 2007, Mr. Bolek called Bob McAvoy concerned that the work under the agreement was not being performed. Mr. McAvoy assured Mr. Bolek not to worry.

41. Defendant never provided Mr. Bolek with an adequate solution. Instead, Mr. Bolek repeatedly received telephone calls from another representative at HOME FORECLOSURE SOLUTIONS requesting mortgage documents from Mr. Bolek that he had previously provided to Mr. McAvoy.

42. Despite demanding a refund, Defendants failed to provide a refund of Mr. Bolek's deposit or and failed to provide any services under the contract.

43. One year later, Mr. Bolek was forced to file for chapter 13 bankruptcy. Mr. Bolek's bankruptcy attorney negotiated a payment plan with the mortgage company so that Mr. Bolek could keep his home.

APPLICABLE STATUTES

44. Section 5 of the Mortgage Rescue Fraud Act, 765 ILCS 940/5, provides in relevant part:

"Distressed property" means residential real property consisting of one to 6 family dwelling units that is in foreclosure or at risk of loss due to nonpayment of taxes, or whose owner is more than 90 days delinquent on any loan that is secured by the property".

"Distressed property consultant" means any person who, directly or indirectly, for compensation from the owner, makes any solicitation, representation, or offer to perform or who, for compensation from the owner, performs any service that the person represents will in any manner do any of the following:

- (1) stop or postpone the foreclosure sale or the loss of the home due to nonpayment of taxes;
- (2) obtain any forbearance from any beneficiary or mortgagee, or relief with respect to a tax sale of the property;
- (3) assist the owner to exercise any right of reinstatement or right of redemption;

- (4) obtain any extension of the period within which the owner may reinstate the owner's rights with respect to the property;
- (5) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed property or contained in the mortgage;
- (6) assist the owner in foreclosure, loan default, or post-tax sale redemption, period to obtain a loan or advance of funds;
- (7) avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale or tax sale; or
- (8) save the owner's residence from foreclosure or loss of home due to nonpayment of taxes.

45. Section 10 of the Mortgage Rescue Fraud Act, 765 ILCS 940/10, provides that:

- (a) A distressed property consultant contract must be in writing and must fully disclose the exact nature of the distressed property consultant's services and the total amount and terms of compensation.
- (b) The following notice, printed in at least 12-point boldface type and completed with the name of the distressed property consultant, must be printed immediately above the statement required by subsection (c) of this Section:

NOTICE REQUIRED BY ILLINOIS LAW

.....(Name) or anyone working for him or her
CANNOT:

- (1) Take any money from you or ask you for money until
.....(NAME) has
completely finished doing everything he or she said he or she
would do; or
- (2) Ask you to sign or have you sign any lien, mortgage, or deed.

(c) A distressed property consultant contract must be written in the same language as principally used by the distressed property consultant to describe his or her services or to negotiate the contract, must be dated and signed by the owner, and must contain in immediate proximity to the space reserved for the owner's signature a conspicuous statement in a size equal to at least 12-point boldface type, as follows:

You, the owner, may cancel this transaction at any time until after the distressed property consultant has fully performed each and every service the distressed property consultant contracted to perform or represented he or she would perform. See the attached notice of cancellation form for an explanation of this right.

(d) A distressed property contract must contain on the first page, in a type size no smaller than that generally used in the body of the document, each of the following:

- (1) the name and address of the distressed property consultant to which the notice of cancellation is to be mailed; and
- (2) the date the owner signed the contract.

(e) A distressed property consultant contract must be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which must be attached to the contract, must be easily detachable, and must contain, in at least 12-point boldface type, the following statement written in the same language as used in the contract:

NOTICE OF CANCELLATION

.....

(Enter date of transaction)

You may cancel this transaction, without any penalty or obligation, at any time until after the distressed property consultant has fully performed each and every service the distressed property consultant contracted to perform or represented he or she would perform.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice to:

.....(Name of distressed property consultant)

at(Address of distressed
property consultant's place of business) I hereby cancel this
transaction on.....(Date)

.....(Owner's signature).

(f) The distressed property consultant shall provide the owner with a copy of a distressed property consultant contract and the attached notice of cancellation immediately upon execution of the contract.

46. Section 15 of the Mortgage Rescue Fraud Act, 765 ILCS 940/15, states:

(a) In addition to any other legal right to rescind a contract, an owner has the right to cancel a distressed property consultant contract at any time until after the distressed property consultant has fully performed each service the distressed property consultant contracted to perform or represented he or she would perform.

(b) Cancellation occurs when the owner gives written notice of cancellation to the distressed property consultant at the address specified in the distressed property consultant contract.

(c) Notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid. Notice by certified mail, return

receipt requested, addressed to the address specified in the distressed property consultant contract, shall be conclusive proof of notice of service.

(d) Notice of cancellation given by the owner need not take the particular form as provided with the distressed property consultant contract and, however expressed, is effective if it indicates the intention of the owner not to be bound by the contract.

47. Section 50 of the Mortgage Rescue Fraud Act, 765 ILCS 940/50, states in relevant part:

(a) It is a violation for a distressed property consultant to:

- (1) claim, demand, charge, collect, or receive any compensation until after the distressed property consultant has fully performed each service the distressed property consultant contracted to perform or represented he or she would perform;
- (2) claim, demand, charge, collect, or receive any fee, interest, or any other compensation for any reason that exceeds 2 monthly mortgage payments of principal interest or the most recent tax installment on the distressed property, whichever is less;
- (3) take a wage assignment, a lien of any type on real or personal property, or other security to secure the payment of compensation. Any such security is void and unenforceable;
- (4) receive any consideration from any third party in connection with services rendered to an owner unless the consideration is first fully disclosed to the owner;
- (5) acquire any interest, directly or indirectly, or by means of a subsidiary or affiliate in a distressed property from an owner with whom the distressed property consultant has contracted;
- (6) take any power of attorney from an owner for any purpose, except to inspect documents as provided by law; or
- (7) induce or attempt to induce an owner to enter a contract that does not comply in all respects with Sections 10 and 15 of this Act.

VIOLATIONS OF THE MORTGAGE RESCUE FRAUD ACT

48. Defendant is a "distressed property consultant" as that term is defined under Section 5 of the Mortgage Rescue Fraud Act, 765 ILCS 940/5, because it advertises and offers to perform services to stop or postpone the foreclosure sale and/or obtain any forbearance from any beneficiary or mortgagee.

49. Defendant has violated Section 10 of the Mortgage Rescue Fraud Act, 765 ILCS 940/10, by:

- a. failing to provide the requisite "Notice Required by Illinois Law" on their Mitigation Reinstatement Service Agreement, Owner Obligation contract, or Agency Agreement contract and
- b. failing to provide the requisite "Notice of Cancellation" on their Mitigation Reinstatement Service Agreement, Owner Obligation contract, or Agency Agreement contract.

50. Defendant has violated Section 15 of the Mortgage Rescue Fraud Act, 765 ILCS 940/15, by including a forfeiture clause in their contract that allows Defendant to retain consumers' payment if they violate any terms of the Owner Obligation contract. Section 15 of the Mortgage Rescue Fraud Act provides consumers a right to cancel a foreclosure contract at any time, until the distressed property consultant has performed all the services as contracted. Defendant's forfeiture clause attempts to prohibit consumers from exercising that right.

51. Defendant has violated Section 50 of the Mortgage Rescue Fraud Act, 765 ILCS 940/50, by demanding, charging, collecting and/or receiving compensation from consumers for their foreclosure rescue services before fully performing the services it contracted to perform.

REMEDIES UNDER THE MORTGAGE RESCUE FRAUD ACT

52. Section 55 of the Mortgage Rescue Fraud Act, 765 ILCS 950/55, provides that:

A violation of any of the provisions of this Act constitutes an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act. All remedies, penalties, and authority granted to the Attorney General or State's Attorney by the Consumer Fraud and Deceptive Business Practices Act shall be available to him or her for the enforcement of this Act.

53. Section 7 of the Consumer Fraud Act, 815 ILCS 505/7, provides:

a. Whenever the Attorney General has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by the Act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the State against such person to restrain by preliminary or permanent injunction the use of such method, act or practice. The Court, in its discretion, may exercise all powers necessary, including but not limited to: injunction, revocation, forfeiture or suspension of any license, charter, franchise, certificate or other evidence of authority of any person to do business in this State; appointment of a receiver; dissolution of domestic corporations or association suspension or termination of the right of foreign corporations or associations to do business in this State; and restitution.

b. In addition to the remedies provided herein, the Attorney General may request and this Court may impose a civil penalty in a sum not to exceed \$50,000 against any person found by the Court to have engaged in any method, act or practice declared unlawful under this Act. In the event the court finds the method, act or practice to have been entered into with intent to defraud, the court has the authority to impose a civil penalty in a sum not to exceed \$50,000 per violation.

c. In addition to any other civil penalty provided in this Section, if a person is found by the court to have engaged in any method, act, or practice declared unlawful under this Act, and the violation was committed against a person 65 years of age or older, the court may impose an additional civil penalty not to exceed \$10,000 for each violation.

54. Section 10 of the Consumer Fraud Act, 815 ILCS 505/10, provides:

In any action brought under the provisions of this Act, the Attorney General is entitled to recover costs for the use of this State.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

A. A finding that Defendant is a distressed property consultant under the Mortgage Rescue Fraud Act;

B. A finding that Defendant has violated Sections 10, 15, and 50 of the Mortgage Rescue Fraud Act;

C. A finding that in violating Sections 10, 15, and 50 of the Mortgage Rescue Fraud Act, Defendant has, thereby, violated the Consumer Fraud Act;

D. An order preliminarily and permanently enjoining Defendant from the use of acts or practices that violated the Mortgage Rescue Fraud Act, including but not limited to, the unlawful acts and practices specified herein above;

E. An order declaring that all contracts entered into between the Defendant and Illinois consumers by the use of methods and practices declared unlawful are rescinded and requiring that restitution be made to such consumers;

F. An order revoking, forfeiting, or suspending any and all licenses, charters, franchises, certificates or other evidence of authority of the Defendant to do business in the State of Illinois;

G. An order assessing a civil penalty in the amount of Fifty-Thousand Dollars (\$50,000) per violation of the Illinois Consumer Fraud Act found by the Court to have been committed by Defendant with intent to defraud. If the Court finds Defendant has engaged in methods, acts, or practices declared unlawful by the Illinois Consumer Fraud Act, without intent to defraud, then assessing a statutory civil penalty of Fifty Thousand Dollars (\$50,000) all as provided in Section 7 of the Illinois Consumer Fraud Act;

H. An order assessing an additional civil penalty in the amount of Ten Thousand Dollars (\$10,000) per violation of the Illinois Consumer Fraud act found by the Court to have been committed by Defendant against a person 65 years of age and older as provided in Section 7 of the Illinois Consumer Fraud Act;

I. An order requiring Defendant to pay the costs of the investigation and prosecution of this action as provided under Section 10 of the Illinois Consumer Fraud Act; and

J. An order granting such other relief as this Honorable Court deems just and proper.

Respectfully Submitted,

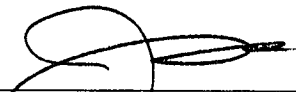
THE PEOPLE OF THE STATE OF
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